

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : David H. Levy
Serial No. : 10/053,264
Filed : January 23, 2002
Title : ACTIVE MESSAGING SYSTEM AND METHOD

Art Unit : 2164
Examiner : Belix M. Ortiz
Confirmation No.: 8694
Notice of Allowance Date: June 27, 2007

MAIL STOP PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO WITHDRAW ABANDONMENT

Under 37 CFR §§1.181, applicant hereby petitions to withdraw the Notice of Abandonment mailed October 23, 2007 (copy enclosed). The application was abandoned because the Patent and Trademark Office records indicate that the issue fee was not paid.

The undersigned, applicant's attorney of record, first became aware of the abandonment on October 29, 2007, upon receipt of the Notice of Abandonment and submits that this petition to withdraw the Notice is being promptly submitted.

The following documents are submitted as proof that the Notice of Allowance was never received:

1. A Declaration by Anne M. Micco attesting, after review of the docketing log from June 26, 2007 through July 27, 2007 and the docket for September 26, 2007, that the Notice of Allowance, dated June 26, 2007, was never received.
2. A copy of the mail log of all USPTO Patent Mail received from June 26, 2007 through July 26, 2007.
3. A copy of the firm docket for September 26, 2007.

Applicant submit a Response to Notice of Allowance as well as payment of the Issue Fee and Publication Fee. The Payment of the Issue and Publication fees being contingent on this petition being granted.

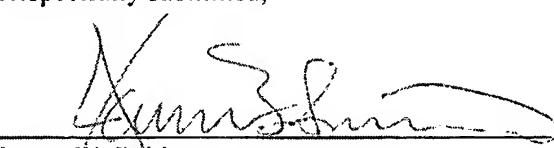
Applicant : David H. Levy
Serial No. : 10/053,264
Filed : January 23, 2002
Page : 2 of 2

Attorney's Docket No.: 13605-004001

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: November 19, 2007


James W. Babineau
Reg. No. 42,276

Fish & Richardson P.C.
Telephone: (617) 542-5070
Facsimile: (617) 542-8906
21788423.doc



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,264	01/23/2002	David Henry Levy		8694
7590 FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER	
			ORTIZ, BELIX M	
			ART UNIT	PAPER NUMBER
			2164	
			MAIL DATE	DELIVERY MODE
			10/23/2007	PAPER

Notice of Abandonment

This application is abandoned in view of:

Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

- (a) The issue fee and publication fee, if applicable, was not received on _____ (with a Certificate of Mailing or Transmission date _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
- (b) The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____.
The publication fee, if required by 37 CFR 1.18(d), is \$_____.
- (c) The issue fee and publication fee, if applicable, has not been received.

Petitions to revive under 37 CFR 1.137(a) or (b), or request to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : David H. Levy
Serial No. : 10/053,264
Filed : January 23, 2002
Title : ACTIVE MESSAGING SYSTEM AND METHOD

Art Unit : 2164
Examiner : Belix M. Ortiz
Conf. No. : 8694
Notice of Allowance Date: June 27, 2007

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF ANNE M. MICCO

I, Anne M. Micco, declare as follows:

1. I have been employed by Fish & Richardson P.C. since February 23, 1998. During the time in question I was the Docketing Administrator in the Patent Services Department.

2. When mail is received by Fish & Richardson P.C. from the U.S. Patent and Trademark Office ("PTO"), the mail is entered and docketed into the Fish & Richardson P.C. computerized docketing system and entered into a manual log of all PTO mail received to date. It is then sent to the attorney in charge of the case for entry into the file.

3. According to our docket system the case identified as U.S.S.N. 10/053,264 filed January 23, 2002 corresponds to client/matter number 13605-004001.

4. I have checked our computerized docketing system and found that the Notice of Allowance dated June 26, 2007 correspondence concerning the above-captioned case was not entered or docketed.

5. I have checked our mail log (Exhibit A) for the period of time from June 26, 2007 through July 26, 2007 and there is no record of ever receiving the June 26, 2007 PTO correspondence.

6. I have checked copies of our docket printout (Exhibit B) showing docketing deadlines occurring on September 26, 2007, the deadline. Each entry in Exhibit B identifies the docketed date; the Fish & Richardson reference number; the U.S. Serial Number; a description of the action; and a description of the type of deadline. For application U.S.S.N. 10/053,264, if we had received a Notice of Allowance dated June 26, 2007 I would have

Applicant : David H. Levy
Serial No. : 10/053,264
Filed : January 23, 2002
Page : 2 of 2

Attorney's Docket No.: 13605-004001

expected to find a docketed deadline of September 26, 2007 for "ISSUE FEE". I did not find such docket entries in Exhibit B.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: November 19, 2007

Anne M. Micco
Anne M. Micco
Docketing Administrator

Fish & Richardson P.C.
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

21788466.doc